IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 67 of 2000

in

SPECIAL CIVIL APPLICATIONNo 7184 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NTC (GUJARAT) LTD

Versus

BALBIR VASHIST

Appearance:

MR BR GUPTA for Appellant

MR DC RAVAL for Respondent

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE J.M.PANCHAL

Date of decision: 3.7.2000

C.A.V.JUDGMENT : (Per : Panchal,J.) :

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated February 17, 2000, rendered by the learned Single Judge, in Special Civil Application No. 7184/91, whereby the penalty of reversion to a lower grade imposed on the respondent by the departmental authorities is substituted for that of withholding of three increments of pay for a period of three years without cumulative effect.

2. In June, 1984, the respondent was appointed as Law Officer in the corporate office of the appellant Corporation. During the year 1986, he was given additional charge of Adviser (Admn. & Pers.). He was required to attend NTC Personnel Executives' Annual Conference held at Bombay in the month of February, 1986. After attending the Conference, he submitted bills claiming T.A./D.A. On the basis of advance receipt No.883, dated February 4, 1986 of Hotel Popular Palace, Bombay, an amount of Rs.285/- was claimed by the respondent for his stay at the said Hotel. On the basis of Bill No.23787, dated February 16, 1986 of another Hotel i.e. Moonlight Lodging House, Bombay, an amount of Rs.175/- was claimed by the respondent for his stay in that Hotel. It was learnt by the appellant that the respondent, in fact, had stayed in Hotel Popular Palace,Bombay for two days only i.e. from 7.00 A.M. of February 14, 1986 to 7.00 P.M. of February 15, 1986 and paid Rs. 190/- only; whereas without staying in Hotel Moonlight Lodging House, the respondent had fraudulently obtained receipt in collusion with the then Assistant Manager of the said Hotel and claimed an amount to which he was not entitled to. Therefore, the respondent was served with a chargesheet and a departmental inquiry was initiated against him. On conclusion of the inquiry, the Inquiry Officer deduced that the charges levelled against the respondent were proved. The disciplinary authority agreed with the conclusions arrived at by the Inquiry Officer and by way of punishment, the respondent was reverted to the post of Manager in the grade of Rs.3000 - 5000, by an order dated March 20, 1991. The respondent filed an appeal before the Board of Directors, which failed. The petitioner, therefore, challenged the reversion order by means of filing Special Civil Application No. 7184/91.

3. The learned Single Judge was of the view that the

respondent was directly appointed to the post of Law Officer and, therefore, could not have been reverted to a lower post. Moreover, it was also found that opportunity of effective cross-examination of the witnesses examined and produced by the department was not afforded to the respondent and the punishment imposed was not only disproportionate to the charges levelled against the respondent, but was harsh. Under the circumstances, the learned Single Judge has set aside the punishment of reversion and substituted the same by punishment of withholding of three increments of pay for a period of three years without cumulative effect, giving rise to the present appeal.

4. We have heard the learned counsel for the parties. The only contention raised on behalf of the appellant to the effect that in view of grave nature of charge relating to fraud and dishonest intention on the part of the respondent, punishment of reversion imposed should not have been substituted by the learned Single Judge while exercising jurisdiction under Article 226 of the Constitution and, therefore, the impugned judgment should be set aside, has no merits. Though it is the case of the appellant that the misconduct committed by the respondent was grave in nature, punishment of removal from service or discharge from service or dismissal from service was not imposed by the disciplinary authority. It is an admitted position that the respondent was directly recruited to the post of Law Officer and, therefore, could not have been reverted to a lower post or grade in view of the decision of the Supreme Court in HUSSAIN SASAN SAHEB KALADGI v. STATE OF MAHARASHTRA, (1988) 4 SCC 168, wherein the view taken is that direct recruit, whether temporary or permanent, cannot be reverted to a lower post and only promotee can be reverted to the post from which he was promoted. It is true that normally High Court, while exercising powers under Art.226 of the Constitution, should not substitute punishment imposed by the disciplinary authority and in case High Court finds that punishment is shockingly disproportionate, it may direct the authority to consider imposition of another punishment. But it is also settled law that, it may itself, to shorten litigation, impose proportionate punishment with cogent reasons in support thereof. In B.C.CHATURVEDI v. UNION OF INDIA AND OTHERS, AIR 1996 SC 484, the Supreme Court has observed as under :

> "The disciplinary authority and/or the appellate authority are invested with the discretion to impose appropriate punishment keeping in view the

> magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed,or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

We may state that the principle laid down in the above-mentioned decision of the Supreme Court has been quoted with approval in U.P.STATE ROAD TRANSPORT CORPORATION AND OTHERS v. MAHESHKUMAR MISHRA AND OTHERS, 2000 AIR S.C.W. 931. It is relevant to notice that with reference to this misconduct, after service of show-cause notice, the respondent was dismissed from service which was challenged by him in Special Civil Application No.4904/87, wherein the Court had issued notice to the appellant and stayed the order of dismissal vide order dated September 29, 1987. The appellant- Corporation had filed Civil Application No.745/89 and as the appellant-Corporation had agreed to hold denovo inquiry in accordance with law from the stage from which it was conducted exparte against the respondent,Special Civil Application No.4904/87 was disposed of. Moreover, with reference to two other misconducts, a notice was issued calling upon the respondent to show cause as to why disciplinary proceedings should not be initiated and pursuant to that notice, the respondent was suspended from service by an order dated September 6, 1993. The show-cause notice as well as suspension order were challenged by means of filing Special Civil Application No. 10727/93, wherein High Court had stayed implementation of suspension order, but no interim order was passed in connection with domestic inquiry. Against the said order, the appellant had filed Letters Patent Appeal No. 81/94 and the order passed by the learned Single Judge was stayed. During the pendency of the appeal, departmental inquiry was conducted against the respondent and at the conclusion of the inquiry, he was dismissed from service, which was challenged in Special Civil Application No. 1922/96. These facts indicate that several litigations were initiated by the parties against each other. The incident involving the respondent took place in the year 1986. Thus, in order to shorten the litigation and in view of the fact that

proper opportunity to cross-examine the witnesses was not afforded to the respondent as well as punishment of reversion was illegal, the learned Single Judge thought it fit to substitute the punishment while exercising the power under Art. 226 of the Constitution. While substituting the punishment, cogent reasons in support thereof have been assigned by the learned Single Judge, which is evident from Paras 8 to 12 of the impugned judgment. On overall view of the matter, we are satisfied that the learned Single Judge has acted fairly while substituting the punishment of reversion for that of withholding of three increments of pay for a period of three years without cumulative effect and calls for no interference in the present appeal. Thus, we do not find any substance in the contention that the punishment imposed by the departmental authorities could not have been substituted by the learned Single Judge and the same is hereby rejected.

No other point has been urged on behalf of the appellant in support of this appeal.

In view of the above discussion, we do not find any substance in the appeal and, therefore, the same is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed, with no order as to costs.

(D.M.Dharmadhikari,C.J.)

(J.M.Panchal, J.)

(patel)

Learned counsel prays for stay of the order of this Court, as the appellants propose to appeal to the Supreme Court. Having held that the dismissal order is bad, we find no ground to grant any interim stay. Prayer is rejected.

(D.M.Dharmadhikari,CJ)

3.07.2000 (J.M.Panchal, J.)